



Jos. J. Albanese, Inc.

Concrete Construction CONTRACTORS LICENSE NO. 299880.

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April 16, 2009

Gabrielle Wilder
Associate Landscape Architect
City of San Jose
Public Works Department
200 East Santa Clara Street, T6
San Jose, CA 95113-1905

Sent Via email to Gabrielle.Wilder@sanjoseca.gov and via US Mail

Re: Fleming Park Project – Protest Response

Dear Mrs. Wilder:

Joseph J. Albanese, Inc (“JJA”) acknowledges receipt of the April 8th bid protest letter from Goodland Landscape Construction, Inc. (“Goodland”) regarding the above referenced project. This letter responds to the claims of Goodland and provides the City of San Jose just cause to reject these claims and award the project to JJA.

Goodland’s protest letter claims that JJA has submitted a non-responsive and incomplete proposal because JJA did not list a resilient surface subcontractor and it does not possess a C-61/D-12 limited specialty license. However, in making these claims, Goodland both misinterpreted contractor’s license law and wrongly assumes that JJA cannot self perform this particular scope of work. JJA requests that for the reasons fully set forth below that the City of San Jose reject the bid protest by Goodland and award the above referenced contract to JJA, the lowest responsible and responsive bidder.

Goodland is incorrect in its claim that only the holder of a D-12 specialty license can perform the resilient surface installation

Goodland wrongly assumes that JJA cannot lawfully self perform the installation of the resilient surface material because JJA does not hold a D-12 limited specialty license. Goodland claims that the installer of the resilient surface material *must* possess a valid D-12 limited specialty contractor’s license. However, Goodland misinterprets the contractors’ license law and fails to realize that license classifications are not mutually exclusive.

Goodland interprets the limited specialty license law as mandating a limited specialty contractor for a particular scope of work. This interpretation by Goodland is inaccurate. A specialty license actually works to **limit** the holder of such license to only performing the scopes of work as listed under the particular license classification.¹ Therefore, the holder of a D-12 license may perform work only under

¹ Title 16 California Code of Regulations § 832.61. Classification C-61--Limited Specialty

(b) An applicant classified and licensed in the classification Limited Specialty shall confine activities as a contractor to that field or fields and scope of operations set forth in the application and accepted by the Registrar or to that permitted by Section 831.

that specialty license classification, but this does not preclude others holding applicable specialty or general licenses from performing such work².

JJA holds both general licenses and five specialty licenses. Most applicable to this inquiry is its Class A license. The Class "A" general engineering license allows JJA to perform, among other things, the installation of surfaces and materials for parks playgrounds and other recreational works.³ The installation of the resilient surface on this project clearly falls under work that can be validly performed under the "A" license since the work is fixed and concerns the installation of a surface on a playground or recreation area.

JJA is properly licensed to perform the scopes of work under its proposal. A limited specialty license is not required to perform the sport surface installation. Therefore Goodland's assertion that JJA is required to hire a specialty installer is incorrect and should be dismissed by the City.

The City's specifications do not require any additional certifications or warranties for installation of the resilient surface material

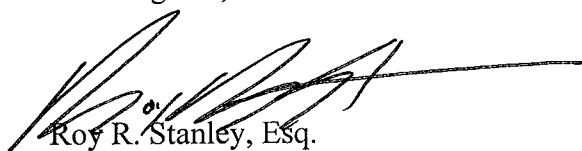
Goodland also claimed that an independent installer with a manufacturer "certification" must install the surfacing for the warranty to be valid. This is another incorrect claim by Goodland; installation of the resilient surface material by JJA, with guidance by the manufacturer as needed, will not act to void any warranties required by the specifications. There is no requirement in the specifications or manufacturer's requirements that JJA hire an outside installer for warranty purposes; only that JJA's installation work is performed as the manufacturer and specifications intended.

JJA will purchase the material and supplies for the resilient synthetic surface as required by the specifications and will self perform the installation scope of work. To assure JJA's performance meets the manufacturer's specifications the supplier / manufacturer of the resilient surface material will provide an installation supervisor to verify that the JJA installation process meets or exceeds the manufacturer's specifications.

In closing, the City should reject Goodland's bid protest and award the project to JJA, the lowest responsive and responsible bidder. JJA is properly licensed to self perform the work in question and was not required to list an independent subcontractor to perform such work.

If you have any further questions or concerns regarding JJA's proposal for this project please contact me immediately.

Best Regards,



Roy R. Stanley, Esq.
In-House Counsel
Cc: City Clerk

² Title 16 California Code of Regulations § 832.61. Classification C-61--Limited Specialty d) A specialty contractor, other than a C-61 contractor, may perform work within the field and scope of the operations of Classification C-61, provided the work is consistent with established usage and procedure in the construction industry and is related to the specialty contractor's classification.

³ Cal Bus & Prof Code § 7056